

COMMENT.

A new point of law concerning telegraph companies has been decided in the case of *Will et al. v. Postal Tel. Cable Co.*, 37 N. Y. Sup. 933, where it is held that the regulation of a telegraph company that its messenger boy, sent to receive a telegram for transmission, shall be deemed the agent of the sender, is invalid. The Court also considers it necessary "to place some wholesome limitations upon the rule under which corporations are attempting, by shrewd and ingenious devices, to escape all responsibility for their negligent acts." While they grant that telegraph companies have power to make certain regulations for the proper conduct of their business, they declare that this one is unreasonable and contrary to good, sound public policy, and consider that if such a regulation is permitted there is no reason why telegraph companies cannot impose upon their patrons the requirement that the operator and the messenger at the other end of the line shall be regarded as the patron's agent, and thus escape entirely what little liability they now assume.

By a majority of five to four the Supreme Court recently upheld as constitutional the Act of February 11th, 1893, empowering the Federal Courts to enforce the Interstate Commerce Law by compelling witnesses to testify.

In this case, *Brown v. Walker*, 16 Sup. Ct. 144, the auditor of the Alleghany Valley Railroad Company was subpoenaed as a witness before a federal grand jury to testify with reference to a charge under investigation by that body, against certain officers and agents of the company, of having violated certain provisions of the Interstate Commerce Act. Several interrogatories were addressed by the grand jury to the witness which he refused to answer on the ground that his answers might tend to criminate him. On a rule to show cause why he should not be punished for a contempt and be compelled to answer, he invoked his constitutional privilege of silence. He was thereupon adjudged to be in contempt, and on *habeas corpus* before the Circuit Court the same position was taken. From that judgment there was an appeal to the Supreme Court.

Mr. Justice Brown, in delivering the opinion of the majority of the court, held that the act in question, by providing that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing

concerning which he may testify," is in the nature of a general amnesty; and that, therefore, since it secures immunity from prosecution, is not in conflict with that clause of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself. The intention of the constitutional provision is thus merely to secure the witness from punishment, not to shield him from the disgrace or opprobrium attending the publication of his crime, and the fact that the witness might be compelled to plead his statutory immunity by way of confession and avoidance, or might be prosecuted in a state court as a result of information disclosed by his testimony before a United States court, was held to be a danger of too remote and unsubstantial a character to have been within the contemplation of the constitutional provision.

Mr. Justice Shiras, in an opinion with which Mr. Justice White and Mr. Justice Gray concurred, citing the authority of Chief-Justice Marshall in Burr's trial, and of Mr. Justice Blatchford in *Councilman v. Hitchcock*, 142 U. S. 547, maintained that inasmuch as the statute does not in fact secure complete immunity, but exposes the witness to possibility of prosecution in the state courts, a possibility which under our complex system of trade and transportation may naturally be expected to frequently arise, it is therefore an infringement upon the constitutional provision and void.

Mr. Justice Field dissented upon the broader ground that the statute undertakes in certain cases to grant a pardon to offenders, a power which by the Constitution it is the sole prerogative of the President to exercise, and that it not only takes away the privilege of silence guaranteed by the fifth amendment, but also encroaches upon the fourth amendment by subjecting to "unreasonable searches and seizures."

The Interstate Commerce Law is a salutary measure designed to protect the people against oppression and exorbitant discrimination by transportation companies transacting business between the different States, and in upholding the act of February, 11, 1893, the court seems to have given great weight to the argument that the act in question was necessary to enable the courts to enforce the beneficial provisions of the Interstate Commerce Law, but it is a matter of regret that the purposes of the law could not have been accomplished through the courts with the existing machinery, without extending their powers by resort to an experimental statute which appears both in letter and in spirit to infringe upon the security to liberty and reputation which the constitutional amendment was intended to provide.